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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,632	07/25/2005	Mikael Hillforth	36211	6374
23589	7590	02/02/2010		
HOVEY WILLIAMS LLP			EXAMINER	
10801 Mastin Blvd., Suite 1000			SANDERSON, JOSEPH W	
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			ART UNIT	PAPER NUMBER
			3644	
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			02/02/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/537,632

**Applicant(s)**

HILLFORTH, MIKAEL

**Examiner**

Joseph W. Sanderson

**Art Unit**

3644

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4-6, 9, 10 and 13-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-6, 9, 10 and 13-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 is dependent on a cancelled claim. (This corrects the previous action which erroneously referred to a “rejected” claim.)

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4-6, 9, 10 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pratt (US 5 673 647) in view of Frey et al. (EP 0 561 071).

Regarding claim 1:

Pratt discloses an apparatus for detecting an animal having a body part and a head part (abstract; cattle), comprising: an animal passage extending in a transport direction, said passage being defined by a first enclosure member and a second enclosure member (Fig 11A), which members are arranged on a respective side of the passage and extend substantially in parallel to said transport direction, and a sensor device which is arranged to sense the animal in the passage (Figs 20A and 20B; col 33, lines 48-67), characterized in that wherein the sensor device is arranged to sense a parameter regarding measurements (col 6, lines 38 and 62) at a determined position in the passage.

Pratt discloses measuring dimensions of each animal via a sensor arranged at a determined position in the passage and the sensor device is arranged to produce a signal when the parameter indicates that the width of the animal is less than a predetermined value at the predetermined position (col 7, lines 30-35 teaches that based on the size of the animal it is categorized and ends up in different pens so the signal produced by the sensor device is that the animal ends up in a particular pen; col 44, line 40, applicant has not claimed the condition or what type of signal and Pratt teaches a visual signal by sorting into various lots based on where the animal falls in relation to a predetermined parameter e.g. weight, size, ownership, etc).

Pratt discloses a controlling processor (abstract; computer system), but does not explicitly disclose that the parameter is related to the width of the animal and the control member being arranged to count the animals passing the animal passage in response to the sensing of the sensor device.

Frey teaches that sensor devices arranged in a passage and arranged to sense a dimension parameter seen in a determined direction and to produce a signal when the parameter indicates

that the dimension is less than a predetermined value is old and notoriously well-known. Frey teaches it is notoriously well-known to utilize a control member connected to the sensor device, the control member being arranged to count in response to the sensing of the sensor device. (abstract; page 2, lines 11 and 51; page 4, line 26; Fig.8).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Pratt with the teachings of Frey as a management measure to obtain accurate information relating to the flow as taught by Frey (Frey, page 4, lines 13-14). The modification is merely the application of a known technique to a known device ready for improvement to yield predictable results. Although Frey teaches measuring the height it would have been obvious to one of ordinary skill in the art to further modify the teachings at the time of the invention by measuring width since it is "obvious to try" choosing from a finite number of identified, predictable solutions with a reasonable" expectation of success, and since width is merely height in a horizontal direction.

Pratt as modified renders the sensor device comprising at least a first sensor and a second sensor, wherein the first sensor is arranged to sense the presence of the animal at a first point of the passage and wherein the second sensor is arranged to sense the presence of the animal at a second point of the passage (Fig 11A, 384, 386 and 388).

Pratt as modified appears to render the first point and the second point both located at the determined position with regard to the transport direction but spaced apart from each other with a distance, wherein said distance is larger than the width of the head part, but is silent on the width being smaller than the width of the body part of an animal of a normal size to be guided through the animal passage, but is silent on explicitly teaching the spacing. However, it would have been

obvious to one of ordinary skill in the art to modify the teachings of Pratt at the time of the invention since the modification is merely a shift in location of a known element performing the same intended function in a more confined space [*In re Japiske*, 181 F.2d 1019, 1023, 86 USPQ 70, 73 (CCPA 1950)].

The additional limitations of “thus producing signals...” (lines 19-20) and “thus in response to the signals” (lines 32-33) are simply recitations of the effects of the other limitations. Thus, if the other limitations are provided, these limitations are met.

Regarding claims 4 and 5:

The discussion above regarding claim 1 is relied upon.

Pratt as modified renders measuring, wherein the determined direction is a substantially vertical direction; determined direction is a substantially vertically downward direction (Frey, page 5, lines 56-58).

Regarding claim 6:

The discussion above regarding claim 1 is relied upon.

Pratt as modified renders the determined direction as a substantially horizontal direction due to the modification to sense width, which is a horizontal measurement.

Regarding claim 9:

The discussion above regarding claim 1 is relied upon.

Pratt as modified renders the first point located in the proximity of the first enclosure member whereas the second point is located in the proximity of the second enclosure member (Figs 11A and 12A).

Regarding claim 10:

The discussion above regarding claim 1 is relied upon.

Pratt as modified does not render the first sensor and the second sensor both provided above the passage to sense the animal passing below the respective first and second sensors.

Frey teaches using sensors above the passage (Figs 1 and 2).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Pratt at the time of the invention since the modification is merely shifting the location of a known elements performing the same intended function for an efficient use of space, to prevent damage caused by the animal kicking and for more accurate sensing [*In re Japiske*, 181 F.2d 1019, 1023, 86 USPQ 70, 73 (CCPA 1950)].

Regarding Claims 13-16:

The discussion above regarding claims 1, 4 and 9 is relied upon.

Pratt as modified renders a gate device (Figs 2 and 5) arranged in the passage to take one of an open position and a closed position and controlled by the controller.

***Response to Arguments***

5. Applicant's arguments filed 13 November 2009 have been fully considered but they are not persuasive.

In response to applicant's argument that Pratt does not teach a signal that is produced when the width of the animal comes below a pre-determined value, col 7, lines 30-35 teaches that based on the size of the animal it is categorized and ends up in different pens so the signal produced by the sensor device is that the animal ends up in a particular pen; col 44, line 40, applicant has not claimed the condition or what type of signal and Pratt teaches a visual signal by sorting into various lots based on where the animal falls in relation to a predetermined parameter e.g. weight, size, ownership, etc. Further, "below a pre-determined value" is broad enough to encompass no animal present, rendering the Pratt device inherently meeting the claim on that basis as well.

In response to applicant's argument that the inventors of the references did not confront the problem of detecting width, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Further, it is noted that Pratt does indeed implicitly detect width, via the use of video scanning to record external measurements.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph W. Sanderson whose telephone number is 571-272-0474. The examiner can normally be reached on M 6:30 am - 11:30 am, T-F 6:30 am - 3:00 pm.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael R. Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. W. S./  
Examiner, Art Unit 3644

/T. T. N./  
Primary Examiner, Art Unit 3644